

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 05-33
September 2, 2005

RE: Is former merit employee who previously served as an officer subject to post-employment laws applicable to officers?

DECISION: Yes, for one year following his service as an "officer."

This opinion is issued in response to your June 20, 2005 request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September 2, 2005 meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are currently the Assistant Director of the Division of Compliance Assistance in the Department of Environmental Protection. You plan to retire and intend to accept employment with an environmental consulting management firm in Kentucky that provides environmental consulting and management services to businesses throughout Kentucky on environmental regulatory and permitting matters.

You have been employed as a merit employee during your entire tenure except for the period from December 1, 2001 through August 13, 2004 when you served as Director of the Division of Water. You also are a licensed professional engineer in Kentucky.

You ask the following:

- 1) *As provided for in KRS 11A.040(7), will I be in compliance with the applicable code of ethics as an employee of the Environmental Consulting firm provided I do not, for a period of six months from the date of my retirement, provide any consulting or environmental management services to any clients or businesses on any matters in which I was directly involved in the last 36 months of my tenure?*
- 2) *As provided for in KRS 11A.040(9), will I be in compliance with the applicable code of ethics as an employee of the Environmental Consulting firm provided I do*

not, for a period of one year from the date of my retirement, represent any business before the Cabinet in any matters in which I was directly involved during the last 36 months of my tenure?

KRS 11A.040(7) provides:

(7) A present or former officer or public servant listed in KRS 11A.010(9)(a) to (g) shall not, within six (6) months following termination of his office or employment, be in matters in which he was directly involved during the last thirty-six (36) months of his tenure. This provision shall not prohibit an individual from returning to the same business, firm, occupation, or profession in which he was involved prior to taking office or beginning his term of employment, or for which he received, prior to his state employment, a professional degree or license, provided that, for a period of six (6) months, he personally refrains from working on any matter in which he was directly involved during the last thirty-six (36) months of his tenure in state government. This subsection shall not prohibit the performance of ministerial functions including, but not limited to, filing tax returns, filing applications for permits or licenses, or filing incorporation papers, nor shall it prohibit the former officer or public servant from receiving public funds disbursed through entitlement programs.

“Officer” is defined in KRS 11A.010(7) as follows:

(7) "Officer" means all major management personnel in the executive branch of state government, including the secretary of the cabinet, the Governor's chief executive officers, cabinet secretaries, deputy cabinet secretaries, general counsels, commissioners, deputy commissioners, principal assistants, division directors, members and full-time chief administrative officers of the Parole Board, Board of Tax Appeals, Board of Claims, Kentucky Retirement Systems board of trustees, Public Service Commission, Worker's Compensation Board and its administrative law judges, the Occupational Safety and Health Review Commission, the Kentucky Board of Education, the State

Board for Adult and Technical Education, the Council on Postsecondary Education, and any person who holds a personal service contract to perform on a full-time basis for a period of time not less than six (6) months a function of any position listed in this subsection.

The Commission believes that because you served as an officer during part of your state tenure, you would be subject to the post-employment laws applicable to officers following your service as an officer. Although as an officer you are prohibited for six months from accepting compensation or employment from any person or business that does business with or is regulated by the state concerning matters under the division that you headed, such prohibition would have been from the date that you no longer served as an officer, beginning August 13, 2004. Six months from that date, beginning February 14, 2005, you would no longer be subject to KRS 11A.040(7).

Thus, because you are no longer an officer, and six months has elapsed since the date you served as an officer, you immediately may accept employment and compensation from any person or business, but you must comply with KRS 11A.040(8) and (9) provided below.

(8) A former public servant shall not act as a lobbyist or lobbyist's principal in matters in which he was directly involved during the last thirty-six (36) months of his tenure for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

(b) The date the term of office expires to which the public servant was elected.

KRS 11A.040(9) prohibits you (even if not an officer), for one year, from representing any person or business before the state in any matters in which you had direct involvement the

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last three years. You are considered to have had direct involvement in any matters on which you personally worked or anyone under your ultimate supervision worked. "Represent" means to communicate on behalf of a person or business. "Matters" means specific cases or projects.

Thus, you may immediately provide consulting and environmental management services for clients even if you had direct involvement with such clients during your tenure, provided for one year you do not represent them before the state in any matters in which you or anyone under your ultimate supervision had direct involvement.

Sincerely

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: John A. Webb